

Message Text

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ACTION EUR-12

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AID-05 CEA-01 AGRE-00 COME-00 EB-08 LAB-04 STR-07
TRSE-00 FRB-03 OMB-01 SIL-01 IO-13 DLOS-09 INT-05
/123 W

-----121129 131413Z /72S

R 131252Z APR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 7613
INFO AMEMBASSY BERLIN
AMEMBASSY BRUSSELS
AMEMBASSY BUCHAREST
AMEMBASSY BUDAPEST
AMEMBASSY COPENHAGEN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY WARSAW
USMISSION USBERLIN
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 03 BONN 06771

USEEC

E.O. 11652: GDS
TAGS: PGOV, BQG, EEC, RO, PL, HU
SUBJECT: APPLICABILITY TO BERLIN OF EC TEXTILE AGREE-
MENTS WITH CEMA COUNTRIES

REFS: (A) BONN 4528 (EXDIS-NOTAL)#
(B) BONN 3927
(C) 77 STATE 163833 (NOTAL)
(D) BONN 3715

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BEGIN SUMMARY. EXTENDED BONN GROUP CONSULTATION
RESULTED IN AGREEMENT APRIL 11 ON THE NEGOTIATING
TACTICS FOR THE AREA OF APPLICABILITY CLAUSE IN EC
AGREEMENTS WITH EAST EUROPEAN COUNTRIES. THE FRG WILL
REJECT IN BONN THE POLISH BILATERAL PROPOSAL THAT THE
FRANK-FALIN CLAUSE BE USED INSTEAD OF THE DRAFT
APPLICABILITY CLAUSE. IN BRUSSELS, THE EC CHIEF

NEGOTIATOR, SUTTON, WILL APPROACH THE POLISH EMBASSY TO REJECT ANOTHER POLISH PROPOSAL MADE IN LONDON ON MARCH 22. BOTH SUTTON AND THE FRG WILL BE AUTHORIZED TO OFFER AN AGREED MINUTE WHICH WOULD ENSURE BERLIN'S INCLUSION IN THE AGREEMENT, WHILE RESERVING THE LEGAL POSITION OF BOTH SIDES ON THE STATUS OF TERRITORIES TO WHICH THE AGREEMENT WOULD APPLY. END SUMMARY

1. ALTHOUGH ACTUAL NEGOTIATIONS BETWEEN THE EC AND THE POLES AND HUNGARIANS HAVE BEEN STALLED FOR SEVERAL WEEKS, THERE HAS BEEN CONSIDERABLE DISCUSSION IN THE BONN GROUP CONCERNING THE AREA OF APPLICABILITY CLAUSE, WHICH IS DESIGNED INTER ALIA TO ENSURE THE INCLUSION OF WEST BERLIN IN EC AGREEMENTS.

2. ON MARCH 13, THE FRG FOREIGN OFFICE REPORTEDLY INSTRUCTED THE FRG DELEGATION TO THE EC TO SUPPORT THE IDEA OF GIVING THE POLISH DELEGATION IN BRUSSELS A LIST OF THOSE TERRITORIES (INCLUDING WEST BERLIN) FOR WHICH THE EC IS COMPETENT (REF A). BEFORE THIS COULD BE DONE, HOWEVER, THE POLISH DELEGATION LEFT AND SUBSEQUENT CONSIDERATION HAS BEEN GIVEN TO HOW THE POLES AND HUNGARIANS CAN BE INDUCED BACK TO THE NEGOTIATING TABLE WITHOUT PUTTING THE EC IN THE ROLE OF DEMANDEUR.

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3. THE FRG REP (VON BRAUNMUEHL) TOLD THE BONN GROUP ON MARCH 14 THAT THE FRG FAVORED HAVING THE FOREIGN OFFICE CALL IN THE POLISH MINISTER IN BONN TO TELL HIM THE FRANK-FALIN CLAUSE WAS UNACCEPTABLE. THE FOREIGN OFFICE WOULD GO ON TO SPEAK ALONG THE LINES THAT UK POLITICAL DIRECTOR HIBBERT DID (REF B, PARAGRAPHS 15-17) AND, IF NECESSARY, HAND OVER A LIST OF THE TERRITORIES IN QUESTION. IF THE POLES WANTED FURTHER ASSURANCES, THE FOREIGN OFFICE WOULD SAY THAT IT WAS PREPARED TO RECOMMEND TO THE EC AN AGREED MINUTE CONTAINING THE SENTENCE "THE AGREEMENT CANNOT AFFECT THE SPECIFIC SITUATION UNDER INTERNATIONAL LAW OF ANY TERRITORY TO WHICH THE TREATY APPLIES, INCLUDING BERLIN (WEST)."

4. THE FRENCH REP SAID SUCH AN APPROACH WOULD PROBABLY BE ACCEPTABLE TO PARIS. THE US REP SAID, AS INSTRUCTED (REF C), THAT WE WOULD LEAVE NEGOTIATING TACTICS TO THE EC MEMBERS. THE UK REP (EYERS) RESERVED HIS POSITION.

5. ON MARCH 21, EYERS, SPEAKING ON INSTRUCTIONS, SAID THAT THE APPROACH WAS "GENERALLY SENSIBLE," BUT THAT IT WOULD BE INAPPROPRIATE FOR THE FRG TO DO THIS

ALONE SINCE SUCH AN APPROACH WOULD ACCENTUATE THE LINK BETWEEN THE TERRITORIAL CLAUSE AND BERLIN. HE PROPOSED AN APPROACH BY THE FRG AND THE EC AND SUBMITTED TALKING POINTS.

6. STILL ANOTHER EAST EUROPEAN PROPOSAL CON-

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CERNING THE CLAUSE WAS MADE ON MARCH 22, WHEN THE POLISH EMBASSY COUNSELOR, KUCHARSKI, CALLED ON THE UK DEPARTMENT OF TRADE (STEELE) TO CONVEY A MESSAGE FROM MINISTER DLUGOSZ OF THE POLISH MINISTRY OF FOREIGN TRADE. KUCHARSKI SAID THAT THE POLES WANTED TO PROPOSE

A REFORMULATION OF THE APPLICABILITY CLAUSE WHICH THEY
THOUGHT SHOULD MEET THE COMMUNITY'S NEEDS. THIS WAS:
"THIS ARRANGEMENT WILL APPLY TO THE TERRITORIES OF THE
POLISH PEOPLE'S REPUBLIC AND THE TERRITORIES OF THE
COUNTRIES (SIC) MEMBERS OF THE EEC." HE SAID THE
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FORMULA HAD BEEN PUT ORALLY TO SUTTON IN THE
COMMISSION, WHERE, IN THE POLISH VIEW, IT HAD BEEN WELL
RECEIVED.

7. PARTLY IN RESPONSE TO THIS LATEST POLISH PROPOSAL,
IT WAS AGREED IN THE BONN GROUP THAT TWO APPROACHES
SHOULD BE MADE. THE FRG WOULD REPLY IN BONN TO THE
"UNOFFICIAL" POLISH PROPOSAL TO USE THE FRANK-FALIN
CLAUSE AS AN AREA OF APPLICABILITY CLAUSE (REF D,
PARAGRAPH 20 AND PREVIOUS) WHILE SUTTON WOULD REPLY
TO THE PROPOSAL MADE BY THE POLES IN LONDON BY MEETING
WITH A REPRESENTATIVE OF THE POLISH EMBASSY IN BRUSSELS
(WHICH WE UNDERSTAND IS FOLLOWING CLOSELY THE
NEGOTIATIONS - REF D, PARA 12).

8. ON APRIL 11, THE BONN GROUP WAS INFORMED THAT LONDON,
PARIS AND BONN HAD AGREED ON THE TEXT OF THE TALKING
POINTS FOR THE APPROACHES AND THE METHOD OF THEIR USE.
THE APPROACHES WILL BE MADE IN THE NEAR FUTURE, PROVIDED
THE EC CAN PREPARE A FINAL LIST OF THE TERRITORIES TO
WHICH THE EC CONSTITUTIVE TREATIES APPLY. A COPY OF THE
DRAFT LIST WAS POUCHED TO USBER AND THE DEPARTMENT
ON MARCH 30, BUT IT APPEARS THE EC LEGAL DEPARTMENT IS
HAVING SOME DIFFICULTIES WITH PARTS OF IT WHICH DO NOT
CONCERN BERLIN.

9. FOLLOWING IS THE AGREED LANGUAGE FOR THE
APPROACHES DESCRIBED ABOVE.

BEGIN TEXT

(FRG ONLY)

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ON 28 DECEMBER YOU SUGGESTED THAT THE DIFFICULTIES WHICH
HAVE ARISEN IN NEGOTIATIONS BETWEEN THE EEC AND POLAND
ON TEXTILES MIGHT BE AVOIDED IF THE APPLICABILITY CLAUSE
WERE DROPPED AND A CLAUSE SUBSTITUTED WHICH IS USED IN

BILATERAL AGREEMENTS WITH POLAND, EXTENDING THOSE AGREEMENTS TO BERLIN, IE: "IN ACCORDANCE WITH THE QUADRI-PARTITE AGREEMENT OF 3 SEPTEMBER 1971 THIS AGREEMENT IS EXTENDED TO BERLIN (WEST) IN ACCORDANCE WITH THE ESTABLISHED PROCEDURES".

NOTING THE HELPFUL SPIRIT IN WHICH IT WAS PUT FORWARD, MY AUTHORITIES HAVE CONSIDERED THIS SUGGESTION CAREFULLY. THEY HAVE CONCLUDED, HOWEVER, THAT THE USE OF SUCH A CLAUSE WOULD BE ENTIRELY INAPPROPRIATE. THE CLAUSE WOULD NOT PERFORM THE FUNCTION REQUIRED OF IT AND IS APPROPRIATE ONLY FOR AGREEMENTS CONCLUDED BY THE FEDERAL REPUBLIC OF GERMANY.

YOUR REMARKS MAKE IT SEEM THAT YOUR AUTHORITIES HAVE MISUNDERSTOOD THE REASON FOR WHICH THE COMMUNITY REQUIRE THE INCLUSION OF THE APPLICABILITY CLAUSE. AS A MATTER OF INTERNAL COMMUNITY PRACTICE AND LAW, IT IS NECESSARY TO BE CLEAR AS TO THE PRECISE AREA OF APPLICATION OF COMMUNITY AGREEMENTS.

(EC ONLY)

ON 22 MARCH YOU SUGGESTED (IN LONDON) THAT THE DIFFICULTIES WHICH HAVE ARISEN IN NEGOTIATIONS BETWEEN THE EEC AND POLAND ON TEXTILES MIGHT BE AVOIDED IF THE PRESENT APPLICABILITY CLAUSE WERE DROPPED AND THE FOLLOWING LANGUAGE SUBSTITUTED: "THIS ARRANGEMENT WILL APPLY TO THE TERRITORIES OF THE POLISH PEOPLES REPUBLIC AND THE TERRITORIES OF THE COUNTRIES MEMBERS OF THE EEC."

WE APPRECIATE THE HELPFUL SPIRIT IN WHICH THIS PROPOSAL
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HAS BEEN MADE AND HAVE GIVEN IT CAREFUL CONSIDERATION. BUT I AM AFRAID WE HAVE CONCLUDED THAT IT FAILS TO MEET THE COMPLEXITIES OF THE APPLICATION OF THE PROPOSED AGREEMENT TO THE VARIOUS TERRITORIES TO WHICH THE COMMUNITY REGULATIONS IN RESPECT OF TEXTILE IMPORTS

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APPLY. AS A MATTER OF INTERNAL COMMUNITY PRACTICE AND
LAW IT IS NECESSARY TO BE CLEAR AS TO THE PRECISE AREA
OF APPLICATION OF COMMUNITY AGREEMENTS.

(BOTH FRG AND EC)

THE CLAUSE MAKES IT CLEAR THAT THE COMMUNITY'S INTER-
NATIONAL COMMITMENT UNDER THIS AGREEMENT HAS THE SAME
TERRITORIAL SCOPE AS THE INTERNAL POWERS WHICH THE
COMMUNITY EXERCISES IN RELATION TO TEXTILE IMPORTS.
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A CLAUSE OF THIS SORT HAS BEEN INCLUDED IN MANY OF THE
COMMUNITY'S AGREEMENTS WITH THIRD COUNTRIES, SUCH AS THE
AGREEMENTS WITH THE INDIVIDUAL EFTA COUNTRIES, AND THE
LOME CONVENTION, AND IN THE DRAFT TEXTS OF OTHER AGREE-
MENTS CURRENTLY UNDER NEGOTIATION.

(EC ONLY)

(IF ASKED FOR FURTHER CLARIFICATION.) THE APPLICABILITY CLAUSE COVERS TERRITORIES OF THE MEMBER STATES AND IN ADDITION VARIOUS TERRITORIES STANDING IN VARYING RELATIONSHIPS TO THE MEMBER STATES. (IF NECESSARY) HERE IS A FULL LIST OF COMMUNITY TERRITORIES IN WHICH THE TEXTILE AGREEMENT WOULD TAKE EFFECT.

(FRG ONLY)

(IF ASKED FOR FURTHER CLARIFICATION.) THE APPLICABILITY CLAUSE COVERS TERRITORIES OF THE MEMBER STATES AND IN ADDITION VARIOUS TERRITORIES STANDING IN VARYING RELATIONSHIPS TO THE MEMBER STATES. THE COMMISSION WOULD BE ABLE TO GIVE THE POLISH SIDE EXPLANATIONS WHICH WOULD MAKE ACCEPTANCE OF THE APPLICABILITY CLAUSE EASIER. THE REMARKS MADE BY THE HUNGARIAN AND POLISH SIDE IN THIS CONNEXION WOULD BE TAKEN INTO ACCOUNT. WE RECOMMEND THAT YOU FOLLOW UP THE SUGGESTION BEING MADE BY THE COMMUNITY FOR CONTINUATION OF THE DISCUSSION.

(BOTH FRG AND EC)

(IF THE POLISH SIDE REMAINS UNSATISFIED AND AGREES THAT THE FACT, IF NOT THE INTENTION, OF THE APPLICABILITY
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CLAUSE PRESENTS A PROBLEM FOR THEM IN RESPECT OF BERLIN.) WE SHOULD BE PREPARED TO AGREE TO A MINUTE REGARDING THE RESERVATION OF LEGAL POSITIONS IN THE FORM PROPOSED TO THE HUNGARIANS OF WHICH YOU HAVE BEEN INFORMED, IE AS REGARDS THE CLAUSE OF APPLICABILITY, THE MEANING OF WHICH IS KNOWN, BOTH SIDES AGREE THAT NOTHING IN THE AGREEMENT CAN AFFECT THE LEGAL STATUS OF ANY TERRITORY TO WHICH THE AGREEMENT IS APPLICABLE.

(IF THE POLES OBJECT TO THE WORDING, OFFER AS AN ALTERNATIVE;) AS REGARDS THE CLAUSE OF APPLICABILITY BOTH SIDES PROCEED ON THE ASSUMPTION THAT THE AGREEMENT CANNOT AFFECT THE LEGAL SITUATION OF ANY TERRITORY TO WHICH THE TREATY APPLIES INCLUDING BERLIN (WEST).

END TEXT

STOESSEL

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